Before the
**FEDERAL COMMUNICATIONS COMMISSION**
Washington, D.C. 20554

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| In the Matter of | ) | |
| | ) | |
| Implementation of Sections 309(j) and 337 | ) | |
| Of the Communications Act of 1934 | ) | WT Docket No. 99-87 |
| As Amended | ) | |
| | ) | |
| Promotion of Spectrum Efficient Technologies | ) | RM-9332 |
| On Certain Part 90 Frequencies | ) | |

To: The Commission

**REPLY TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION OF THE AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.**

The American Mobile Telecommunications, Inc. ("AMTA" or "Association"), in accordance with Section 1.429 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits the following Reply to the pleadings submitted in this proceeding[1] in response to the joint Petition for Reconsideration ("Petition") filed by AMTA, the Industrial Telecommunications Association, Inc. ("ITA") and PCIA – The Wireless Infrastructure Association ("PCIA"). For the reasons detailed herein, AMTA urges the Commission to adopt the accelerated narrowband conversion deadline for non-public safety systems recommended in the Petition, and to eliminate both the prohibition against modification of existing 25 kHz systems and the restrictions on the manufacturing and importation of equipment that includes a 25 kHz capability.

## I. RESPONSIVE FILINGS

AMTA first would note that there is substantial agreement in the Petitions for Reconsideration and the responsive pleadings. There is broad support for the central tenet of the

[1] *Second Report and Order and Second Further Notice of Proposed Rule Making,* WT Docket No. 99-87, 18 FCC Rcd 3034 (2003) ("2nd R&O").

FCC's decision: the industry agrees that the Commission should establish a date certain for conversion to 12.5 kHz bandwidth technology, or technology with comparable or superior spectrum efficiency.[2] There also is general agreement that the FCC should eliminate or relax its prohibition against major modifications of 25 kHz systems after January, 2004, since the requirement would force a significant number of licensees to convert their entire systems within this accelerated period to maintain necessary levels of interoperability. Additionally, a number of parties have agreed that the restrictions on equipment certification, importation and manufacturing should be modified to parallel the conversion deadlines or eliminated entirely as superfluous in light of those dates.

Three parties opposed the January 1, 2008 deadline suggested in the Petition, while one entity specifically supported it. The Association of American Railroads ("AAR"), the American Petroleum Institute ("API") and the Private Wireless Mining Coalition ("Coalition") each urged the FCC not to accelerate the current January 1, 2013 conversion deadline, although advancing different rationales for their positions.

For example, the crux of AAR's objection is that the railroad industry effectively operates a nationwide, integrated system of unequal scope. Although licenses are held by individual entities, their systems, of necessity, must be interoperable with those of all other railroads in this country and even with their counterparts in Canada. AAR argues that the vast size and complexity of the interrelated railroad network necessitates a longer conversion period. API also notes the large systems operated by some of its members and challenges the Petition's assessment of the relative ease of conversion. It asserts without explanation that a more than four-year conversion period is inadequate. Finally, the Coalition argues that the rural areas in

[2] A number of parties have requested clarification or reconsideration to confirm that the FCC did not intentionally abandon its previously adopted spectrum efficiency equivalency provision. *See*, e.g., filings of the Association of Public-Safety Communications Officials-International, Inc. ("APCO"), Kentec Communications, Inc., IPMobileNet, Inc., and Tait North American, Inc.

which its members operate do not experience spectrum shortages; thus, greater efficiency is not needed, and the requirement to achieve it should be postponed as long as possible. It describes the importance of radio communications in day-to-day mining operations, as well as the safety and environmental risks that would result from disruption of those activities during the conversion process.

By contrast, Rural/Metro, a multi-state provider of ambulance and fire protection services that holds more than a hundred licenses for both public safety and industrial/business channels in these bands, endorses the accelerated deadlines recommended in the Petition and in the Petitions for Reconsideration filed by APCO and FLEWUG.[3] While it too relies on radio to carry out its emergency service operations, it has determined that the pressing need for increased capacity justifies conversion within the time period proposed in the Petition.

## II. DISCUSSION

Unquestionably, the most difficult issue in this proceeding is determining what the conversion deadlines should be.[4] The decision requires a careful balancing of diverse interests as there is not now and never will be a date which all parties agree is the optimal conversion date. However, in the end, the unique requirements of particular classes of users cannot become the yardstick by which the appropriate deadline is measured. Orchestrating an industry-wide migration to more efficient technology requires coordination and cooperation, including from entities that would prefer to maintain the status quo. In light of the need to establish a date certain, the arguments of those who oppose the accelerated deadline recommended in the

[3] *See* Petitions for Reconsideration from APCO and the Federal Law Enforcement Wireless users Group ("FLEWUG"), both recommending that the public safety conversion deadline be advanced from January 1, 2018 to January 1, 2013.

[4] AMTA takes no position on the appropriate deadlines for public safety systems. However, it notes that even representatives of the public safety community, which often faces difficult funding processes and lengthy funding cycles, has requested that the FCC accelerate the deadline applicable to public safety systems by five years.

Petition, while unquestionably heartfelt, do not warrant retention of the existing ten-year date on a nationwide or industry wide basis.

The issues raised by AAR appear to be unique to that critical, but small, sub-segment of the land mobile industry. The railroad community may be able to document extraordinary complexities requiring a longer than typical conversion process. However, in that event, those needs should not dictate the timetable for the long-awaited, much needed, industry wide conversion. Instead, to the extent the FCC is persuaded that the railroad industry needs more time to convert to more efficient technology, it should carve out those systems by exemption or waiver tailored to the particular facts supporting such a request.

In respect to the position adopted by API, that filing offers no explanation for its statement that the Petition oversimplified the equipment procurement and transition process. Certainly API does not dispute that dual-mode equipment has been available for more than seven years and that the industry has been on notice for more than a decade that conversion would be necessary at some point. It does not explain why a more than four-year conversion process is not "realistic", but that a nine and one-half-year deadline is. Obviously, parties whose legacy equipment continues to work, and who do not themselves need additional capacity have no motivation to convert at any time and every incentive to delay the process as long as possible. That is precisely the situation that exists today and that has necessitated adopting a date certain for conversion. If API can offer a specific explanation why certain members need another ten years to complete a migration process that it acknowledges some have begun already and that presumably all have been aware was in the offing for ten years already, those unique situations, like AAR's, are more appropriately addressed by waiver. They should not determine the conversion deadline for the industry generally.

Finally, the Coalition has submitted a lengthy document detailing the importance of radio in the hazardous mining industry and arguing that an accelerated conversion deadline will create unacceptably high safety and environmental risks. It also spends considerable time documenting AMTA's original proposal that prompted this proceeding which, it notes accurately, recommended tiered conversion deadlines with rural areas having an extended period before migration to more efficient technology would be required.

The Coalition may rest assured that AMTA, and presumably others, do not doubt the importance of radio systems to the safe and efficient operation of mines. While mining activities are not unique within the land mobile community in their reliance on radio communications or in the hazardous nature of their day-to-day operations, their needs, like the needs of all other land mobile constituencies, must be taken into consideration in crafting appropriate rules.

However, the crux of the Coalition's Opposition to the Petition appears to be that its members' systems operate primarily in rural areas where spectrum is relatively plentiful and, therefore, that their conversion obligations should be later rather than sooner.[5] AMTA is not unsympathetic to that argument as evidence by its original, tiered proposal. The Association, many of whose members operate in rural areas, understands the strong resistance to conversion to more efficient technology in markets where there are no apparent spectrum shortages. However, the FCC declined to adopt a tiered migration process. It considered and specifically rejected that approach, opting instead to follow the recommendations of PCIA and ITA that had argued for a single nationwide plan on the basis that it would facilitate a "uniform and smooth

[5] The Opposition also objects to acceleration of the date even for urban systems, although the rationale is somewhat less clear. The position seemingly is that urban licensees who secure consent from affected co-channel and adjacent channel licensees should be permitted to continue operating 25 kHz systems indefinitely. However, that defeats the very purpose of the FCC's initiative since it takes into consideration only incumbent licensees. The interests of new entities that would secure spectrum by virtue of the conversion process are not represented in the Coalition's analysis.

transition."[6] Therefore, while AMTA would not oppose a Commission decision to have separate conversion deadlines for urban versus rural systems, if there is to be a single date it cannot be pegged to the timing preferences of rural entities while spectrum shortages continue to grow in an increasing number of urban markets.

In light of the Commission's decision not to implement a tiered approach, a public interest calculation comes down squarely on the side of a more accelerated conversion process.[7] The FCC already has concluded that the record in this proceeding supports a determination that the existing rules have not produced the desired spectrum efficiencies in the bands in question.[8] The FCC has decided that the public interest demands adoption of a more aggressive approach. Under these circumstances, the Coalition has provided no explanation why an additional four years would not be sufficient for its members to convert existing dual-mode equipment to 12.5 kHz operation and to replace any legacy 25 kHz-only equipment, since the entire industry has been on notice of the impending requirement for more than a decade.[9] It has not explained why the issues it has identified would not arise if the conversion period instead was nine years. As pointed out in the Petition, any new equipment purchased during the past seven years already is

[6] 2nd R&O at ¶ 15.

[7] The Coalition also claims that the argument for accelerated conversion to 12.5 kHz capability in the Petition is inconsistent with the Petitioners' recommendations in response to the Further Notice portion of the proceeding that the FCC not set a date certain for conversion to 6.25 kHz technology. However, there is no inconsistency. The Petitioners, like virtually all of the land mobile industry, advised the FCC that it was premature to establish a conversion deadline for 6.25 kHz technology since no such equipment even was in the process of development. By contrast, 12.5 kHz capable equipment has been available for more than seven years and already has been implemented by a significant number of licensees. Additionally, AMTA noted that continued narrowbanding was not the only, and possible not the preferred, approach to enhanced efficiency in these bands. It urged the FCC to evaluate other options for achieving efficiency improvements, many of which rely on broader rather than narrower bandwidth technology.

[8] 2nd R&O at ¶ 11.

[9] The Coalition's argument in respect to what constitutes "notice" of a rule change and the requirements of the Administrative Procedure Act misses the point. *See* Coalition Opposition at pp. 10-13. The Petition did not claim that the licensees were obligated to begin converting to more efficient technology in advance of an FCC requirement to do so such as that adopted in the 2nd R&O. It did note that the industry generally has been aware of the FCC's effort to promote more efficient use of these bands for more than a decade. Users that have elected not to begin implementing equipment consistent with that initiative during the more than seven years it has been widely available should not now react with surprised indignation that the FCC might require them to do so over another five-year period.

capable of dual-mode operation. To the extent equipment was purchased prior to that time, licensees would have enjoyed more than ten years of use before even the accelerated deadline would apply. Thus, a 2008 conversion date would provide more than the ten-year transition cycle the Commission identified as reasonable in the 2nd R&O.[10]

## III. CONCLUSION

The Oppositions to the Petition do not support the need for a ten-year conversion process for non-public safety systems other, perhaps, than on the basis of individual licensee or industry segment-specific showings. The vast majority of users in these bands are capable of migrating to more efficient equipment on the accelerated basis recommended in the Petition without undue disruption or cost. The industry generally has been preparing itself for conversion for almost a decade because of its need for additional capacity in a growing number of markets. The FCC rules should be responsive to the broad industry interest in completing a coordinated migration to greater efficiency, not reflective of the minority preferences described in the Oppositions, which can and should be handled through waivers or other carefully targeted policies.

Respectfully submitted,

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[10] 2nd R&O at ¶ 18.